S.B. CIVIL WRIT PETITION NO.981/2003

Bhawani Shankar vs. State of Raj. and others.

Date : 21.3.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. K.K. Shah for the petitioner

Mr. S.N. Tiwari, Dy.GA, for the respondents.

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Heard learned counsel for the parties.

The grievance of the petitioner is that the petitioner's vehicle is sought to be auctioned by issuing notice Annex.10 for the amount which the petitioner has already deposited for which the respondent department themselves have issued receipts (Annexures-1 to 5).

It appears from the reply filed by the respondents that the respondents are refusing to give due credit of the amount deposited by the petitioner because of the reason that the petitioner did not submit the return in the prescribed form.

In view of the above fact and in view of the fact mentioned in Annex.R/1, it is clear that the amount which has been deposited by the petitioner has not been credited before raising any demand against the petitioner. In case, the petitioner has already deposited the amount in time, then he could not have

been punished by imposing interest and penalty.

Since this is an admitted case of not giving credit of tax deposited by the petitioner, therefore, auction notice dated 20.2.2003 (Annex.10) deserves to be set aside

In view of the above, this writ petition is allowed, the auction notice dated 20.2.2003 (Annex.10) is set aside and the District Transport Officer cum Taxation Officer, Sirohi is directed to consider the matter afresh by giving credit of the amount which has been deposited by the petitioner and may determine the liability of the petitioner after taking into account all the relevant facts and after giving opportunity of hearing to the petitioner. The petitioner shall be free to raise all his objections before the Taxation Officer against any liability sought to be raised against him.

The petitioner shall appear before the Taxation Officer on 15.4.2005 who shall decide the matter within a period of two months thereafter by a brief speaking order.

(PRAKASH TATIA), J.

S.Phophaliya